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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 13 2007

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's ultimate decision denying the petition.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) provides that a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. The petitioner holds a Bachelor of Veterinary Medicine from Yunnan Agricultural University. The petitioner submitted an evaluation from Eurasia Diploma Evaluators equating this degree to a baccalaureate degree awarded by an accredited college in the United States. The petitioner has documented more than five years of progressive experience in the field. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding the equivalent of an advanced degree.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, HIV research, and that the proposed benefits of his work, prevention and treatment of HIV, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Several references stress HIV's toll on the world and the importance of preventing and treating this disease. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so

important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218.

In addition, several references stress the petitioner's experience and laboratory skills. It cannot suffice, however, to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Moreover, with regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the job offer/alien employment certification requirement, arguments hinging on the degree of experience required, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In China, the petitioner worked as a clinical veterinarian and then served as Chief Veterinarian and Administrator at the Kunming Institute of Zoology. [redacted], Director of the Primate Cognition Neural Science Laboratory at the Kunming Institute of Zoology, asserts that the petitioner set up a standardized team for animal research and was a skilled vet neurosurgeon. [redacted] lists several research articles on animal nutrition, diseases and breeding, some of which received provincial or national awards. The vast majority of this work, however, appears unrelated to the prevention and treatment of HIV/AIDS. Rather, the petitioner authored a single article on SAIDS *diagnosis* in the macaque monkey while in China. While the petitioner submitted lists of articles that purportedly cite his Chinese articles and book chapters, the petitioner never claims that his article on diagnosing SAIDS has been cited. While the petitioner may have acquired technical skills that are relevant to his current work before coming to the United States, it does not appear that his work in China represents a track record of success preventing and treating HIV/AIDS. This conclusion is reinforced by the petitioner's supervisor at the University of Washington, who asserts that the petitioner spent 1998 through 2001 "working and training in laboratory techniques and assays for *in vitro* efficacy and cytotoxicity of potential anti-HIV compounds." Thus, this decision will focus on the petitioner's work in the United States.

From September 1998 through March 2001, the petitioner worked in the laboratory of [redacted] at the Washington National Primate Research Center (WaNPRC) at the University of Washington. The petitioner then joined Pharmacor, Inc., co-founded by [redacted] The petitioner then rejoined the laboratory of [redacted] in May 2004. The petitioner has submitted two

letters from [redacted] and three from [redacted], none of which appear on the official letterhead of any institution.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

[redacted] explains that as a virologist at the Armand-Frapier Institute (AFI), she and [redacted] investigated small molecules as potential drugs for HIV/AIDS. Their "chemist students" synthesized several hundred compounds that they then tested. [redacted] then co-founded Pharmacor to identify promising compounds for clinical development as potential HIV/AIDS drugs. The petitioner "took control of the compounds' evaluation process on HIV in cell cultures" and produced reproducible results. The petitioner "evaluated several hundred new compounds against HIV in cell culture, some of which proved highly potent." Most significantly, the petitioner characterized P-1946 and compared the features of PL-100 with those of current drugs. His work with PL-100 included testing PL-100 against resistant strains of HIV. The petitioner presented this work at conferences.

On appeal, [redacted] reiterates that the petitioner evaluated the anti-HIV activity of hundreds of compounds synthesized by the company's chemists. [redacted] speculates that the usefulness of P-1946 "would probably have been missed without the expert work of [the petitioner]." [redacted] notes that the petitioner's characterization of P-1946 was presented at a conference in 2003 and has now been published. As the publication occurred after the date of filing, we cannot consider its impact as evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). [redacted] further asserts that PL-100 is now in clinical phase I trials. The petitioner submitted what appear to be Internet news reports about P-1946. The reports, however, are not simply downloaded from the Internet but incorporated into a single document that has been altered to include a heading referencing the petitioner and a number

for each article. The petitioner also submitted portions of the alleged patent applications for P-1946 and PL-100. The portions submitted do not identify the petitioner as one of the inventors.

Upon his return to [redacted] laboratory, the petitioner investigated in vitro and animal models of topical microbicides. The petitioner "validated" a new evaluation system for screening compounds in vitro and performed a search of the literature to discover several new potent inhibitors of HIV-1. According to [redacted], Director of the University of South Alabama Cancer Research Institute and a collaborator with [redacted] the petitioner confirmed that cyanovirin-N (CV-N), invented by [redacted] can be used as a topical microbicide in a macaque model for preventing HIV transmission.

On appeal, [redacted] asserts that the petitioner is humble and "always asked to put his name toward the end." It is instructive, however, to review the petitioner's role as described in materials not prepared for this petition. In the Technical Proposal for the petitioner's research under [redacted] submitted in response to the director's request for additional evidence, the petitioner's responsibilities are listed as "ensuring consistency in drug administrations and virus inoculations and conducting thorough clinical evaluations to detect and monitor drug (and virus infection) side effects." These responsibilities are consistent with the petitioner's training as a veterinarian. While the petitioner is clearly involved in important research and his references credit him with contributing to the success of this research, it appears that his responsibilities are limited to inoculating and monitoring the health of the research subjects. The references do not satisfactorily explain why the skills required to inoculate and monitor primate research subjects, skills that we do not deny are important, cannot be easily articulated on an application for alien employment certification.

Moreover, while the petitioner submitted evidence on appeal documenting that his article on CV-N has been cited, it does not appear that his research team was the first team to report on the microbicide effects of CV-N. The petitioner submitted several Internet news reports on CV-N, including one that notes the petitioner's results. Nevertheless, many of the news reports, including those that report on CV-N as a potent microbicide, predate the petitioner's 2003 article on this subject. For example, a *Reuters Health Information* article entitled "Cynanovirin-N Shows Potential to Block HIV Transmission," published in May 2000, reports that a research team led by [redacted] concluded that CV-N "could be used to prevent HIV during sex." In 2002, Biosyn, Inc. received a $10 million grant for the development of CV-N as a microbicide. The November 2002 article reporting this grant indicates that studies had already demonstrated CV-N's potential use as a microbicide and noted positive outcomes of this research including "a primate model in which CV-N was shown to prevent vaginal and rectal transmission of simian-human immunodeficiency virus (SHIV), an HIV-like virus that infects monkeys." While the petitioner's participation in this area of research is noted, it remains that [redacted] invented CV-N, it was described as a microbicide candidate at least three years prior to the petitioner's article and it had been shown to be effective as a microbicide several months before the petitioner's article was published.

In response to the director's request for additional evidence, the petitioner submitted what is purported to be a letter from an independent expert. While [redacted], an assistant professor at McGill University, may not have worked directly with the petitioner, he received his Ph.D. from the University of Washington in 2003. This letter does not establish that the petitioner is known beyond the institutions where he has been employed.

On the job training is not comparable to innovation of a new method. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221, n. 7. Specifically, in that case the AAO found insufficient the training the alien had had with the "world famous Freyssinet System of Post-tensioning" and his involvement with "innovative projects such as segmental arch structures patented by the French company 'Matiere.'" Similarly, confirmation of HIV treatments developed by others may demonstrate the petitioner's training and technical skills, but is not comparable to the innovation of the treatment itself. While the petitioner has demonstrated his involvement with important projects, he has not demonstrated that he is responsible for the innovative aspects of these projects. Rather, by inoculating and monitoring the health of animals through his training as a primate veterinarian, he has confirmed the medical efficacy of compounds developed by others.

We do not question the need for someone with the petitioner's training on these important primate studies. The petitioner's skills, however, would appear amenable to enumeration on an application for alien employment certification. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.